

4 SECURITIES AND EXCHANGE COMMISSION,
5
6 Plaintiff,
7 VS.
8 BRIAN N. LINES, ET AL.,
9 Defendants.

14 VIDEOTAPED DEPOSITION OF THE WITNESS,
15 MALCOLM MOSELEY,
16 TAKEN BY THE PLAINTIFF
17 ON THURSDAY, NOVEMBER 12, 2009

1 APPEARANCES:

3 U.S. SECURITIES AND EXCHANGE COMMISSION
4 100 F Street Northeast
5 Washington, DC 20549-4010
Phone: (202)551-4953
ATTORNEYS FOR THE PLAINTIFF
BY: JUSTIN CHRETIEN, ESQUIRE

7 PATTON BOGGS LLP
1185 Avenue of the Americas, 30th Floor
8 New York, New York 10036-2603
9 Phone: (646) 557-5100
ATTORNEYS FOR DEFENDANT BRIAN LINES
BY: PHILIP M. SMITH, ESQUIRE

1 K&L GATES
1601 K Street Northwest
2 Washington, DC 20006
2 Phone: (202)778-9440
3 ATTORNEYS FOR DEFENDANT SCOTT LINES
3 BY: STEPHEN J. CRIMMINS, ESQUIRE

KELLOGG, HUBER, HANSEN,
TODD, EVANS & FIGEL, P.L.L.C.
1615 M Street Northwest, Suite 400
Washington, DC 20036
Phone: (202)326-7918
ATTORNEYS FOR DEFENDANTS LOM ENTITIES
BY: REID M. FIGEL, ESQUIRE

9 ALSO PRESENT: Rolf Martin, Videographer

三

INDEX

INDEX				
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
	MALCOLM MOSELEY			<u>RECROSS</u>
4	By Mr. Chretien	5		
5	By Mr. Figel		74	
6				
7				
8				
9		<u>EXHIBITS</u>		
10	Plaintiff's 119			27
11	Plaintiff's 120, 121, and 122			53
12	Plaintiff's 121A and 121B			56
13	(All exhibits were retained by Mr. Smith.)			

EXHIBITS

10 Plaintiff's 119 27
11 Plaintiff's 120, 121, and 122 53
12 Plaintiff's 121A and 121B 56
13 (All exhibits were retained by Mr. Smith.)

2 THE VIDEOTAPED DEPOSITION OF THE WITNESS
3 MALCOLM MOSELEY, TAKEN BY THE PLAINTIFF, IN THE
4 ABOVE-TITLED CAUSE, BEFORE PAMELA GRIMALDI,
5 REGISTERED PROFESSIONAL REPORTER AND NOTARY PU
6 STATE OF FLORIDA AT LARGE, AT 101 SOUTH ROAD,
7 SOUTHAMPTON, BERMUDA ON THURSDAY, NOVEMBER 12,
8 BEGINNING AT 2:21 P.M., PURSUANT TO THE NOTICE
9 HERETOFORE FILED.

0 THE VIDEOGRAPHER: The time is 2:21 p.m. on
1 November 12, 2009. This is Tape 1 of the
2 deposition of Mr. Malcolm Moseley in the matter of
3 Securities and Exchange Commission versus Lines,
4 et al., in the United States District Court,
5 Southern District of New York at the Fairmont
6 Southampton, 101 South Road, Southampton, SN02
7 Bermuda.

8 My name is Rolf Martin in association with
9 Reporting and Transcription Services Bermuda Ltd.
0 The court reporter is Pam Grimaldi in association
1 with Reporting and Transcription Services Bermuda
2 Ltd.

3 Would counsel please state their appearances
4 for the record after which the reporter will
5 affirm the witness.

1 Q Portrait.
 2 A Okay.
 3 Q Have you had a chance to review it?
 4 A Yes.
 5 Q Is that an Uptix™ product?
 6 A Again, it looks like it's data extracted from
 7 Uptix™ and put into a spreadsheet.
 8 Q Okay. Same question with respect to the
 9 second half of the exhibit, which begins the landscape
 10 layout, 121 bravo. Is that Uptix™ data put into a
 11 spreadsheet format?
 12 MR. FIGEL: Objection.
 13 THE WITNESS: It looks like it, yes.
 14 BY MR. CHRETIEN:
 15 Q Okay. Are you familiar with the ICH account
 16 at LOM?
 17 A No.
 18 Q Have you ever heard of the ICH account?
 19 A I've heard of the name as a client.
 20 Q Are you aware that LOM uses nominee
 21 accounts?
 22 MR. FIGEL: Objection.
 23 THE WITNESS: Yes.
 24 BY MR. CHRETIEN:
 25 Q How would you define a nominee account?

1 A LOM uses nominee accounts to take down
 2 private placements, typically.
 3 Q Well, what is a nominee account?
 4 A A nominee account is a name that we have
 5 share certificates registered in.
 6 Q Why would you want to use a nominee account?
 7 MR. FIGEL: Objection.
 8 THE WITNESS: Industry practice.
 9 BY MR. CHRETIEN:
 10 Q Does LOM use nominee accounts today?
 11 A Yes.
 12 Q Was ICH one of their nominee accounts in the
 13 relevant time period?
 14 MR. SMITH: Objection.
 15 THE WITNESS: I don't know.
 16 BY MR. CHRETIEN:
 17 Q Are there any restrictions on the use of
 18 nominee accounts?
 19 MR. FIGEL: Objection.
 20 MR. SMITH: Objection.
 21 BY MR. CHRETIEN:
 22 Q For LOM.
 23 MR. FIGEL: Objection.
 24 MR. SMITH: Objection.
 25 THE WITNESS: I don't understand the

1 question.
 2 BY MR. CHRETIEN:
 3 Q Okay. For what purposes, you, as chief
 4 executive officer, would a nominee account be used
 5 for?
 6 MR. FIGEL: Objection.
 7 THE WITNESS: In the time period?
 8 BY MR. CHRETIEN:
 9 Q Yes.
 10 A Typically if we were doing a private
 11 placement, for example, let's say we were buying a --
 12 500,000 shares of ABC Corp., for example. We would
 13 typically find out how many of our clients were
 14 interested in purchasing it, and then we would take
 15 down that 500,000 shares typically in a nominee name.
 16 Q And you would use the nominee account for
 17 convenience, I take it?
 18 A Yes.
 19 Q Rather than have individual accounts?
 20 A Let's say there were 50 accounts. You'd have
 21 to fill in 50 private placement documents. Some of
 22 them can be, you know, two inches thick.
 23 Q And would there be -- if there was a --
 24 withdraw that.
 25 Is there typically a business or a

1 corporation behind a nominee account?
 2 MR. FIGEL: Objection.
 3 THE WITNESS: The nominee account would be
 4 owned by either an individual or a corporation,
 5 yes.
 6 BY MR. CHRETIEN:
 7 Q Okay. And at that -- when LOM uses nominee
 8 accounts today, does it pay the director of that
 9 corporation for that service?
 10 MR. FIGEL: Objection.
 11 THE WITNESS: Today?
 12 BY MR. CHRETIEN:
 13 Q Yes.
 14 A No.
 15 Q Why not?
 16 MR. FIGEL: Objection.
 17 THE WITNESS: LOM now uses LOM Nominees to
 18 take down all its private placements. May use LOM
 19 Securities Bermuda.
 20 BY MR. CHRETIEN:
 21 Q Why -- what is an LOM nominee?
 22 A LOM Nominees is a company that's owned by L
 23 Holdings 100 percent. For example, the Bermuda Stock
 24 Exchange, you have to hold your shares in a nominee
 25 name, LOM Nominees Ltd.

1 Q When was LOM Nominees Ltd. created?
 2 A I don't know.
 3 Q Well, it was after the time period we've been
 4 discussing?
 5 MR. FIGEL: Objection.
 6 THE WITNESS: No, I don't believe so.
 7 BY MR. CHRETIEN:
 8 Q Can you estimate a year?
 9 A No.
 10 Q Why was it created?
 11 MR. FIGEL: Objection.
 12 THE WITNESS: LOM Nominees Ltd.?
 13 BY MR. CHRETIEN:
 14 Q If you know.
 15 A To hold local Bermuda assets.
 16 Q What was wrong with the old way of doing it?
 17 MR. FIGEL: Objection.
 18 THE WITNESS: I don't know. That's a
 19 requirement of the Bermuda Stock Exchange.
 20 BY MR. CHRETIEN:
 21 Q So who serves -- the LOM Nominees, then, the
 22 nominee accounts are owned by LOM; is that correct?
 23 MR. FIGEL: Objection.
 24 THE WITNESS: LOM Holdings Ltd.
 25 BY MR. CHRETIEN:

1 Q Okay. Prior to LOM Nominees Ltd. -- Ltd.'s
 2 existence, LOM used nominee accounts owned by other
 3 entities, correct, or persons?
 4 MR. FIGEL: Objection.
 5 MR. SMITH: Objection.
 6 THE WITNESS: Correct.
 7 BY MR. CHRETIEN:
 8 Q How did that work?
 9 MR. FIGEL: Objection.
 10 MR. SMITH: Objection.
 11 THE WITNESS: To take my private placement
 12 example, ABC Corp., we've got 50 clients that wish
 13 to purchase a private placement, let's say it's a
 14 hundred thousand shares, we would then take that
 15 hundred thousand shares down in a nominee name.
 16 BY MR. CHRETIEN:
 17 Q And if the deal went bad, would you look to
 18 the director of the nominee entity to recoup any
 19 losses, for example?
 20 MR. FIGEL: Objection.
 21 THE WITNESS: I don't understand if the deal
 22 went bad.
 23 BY MR. CHRETIEN:
 24 Q Well, what were the responsibilities of a
 25 director for a nominee account at LOM?

63

1 MR. FIGEL: Objection.
 2 MR. SMITH: Objection.
 3 BY MR. CHRETIEN:
 4 Q If you know.
 5 A I don't know.
 6 Q Have you been -- have you used nominee
 7 accounts before in your work as CFO for LOM?
 8 MR. FIGEL: Before what?
 9 BY MR. CHRETIEN:
 10 Q At any time.
 11 A Yeah, we used them for private placements, as
 12 I said earlier.
 13 Q And was it your custom and practice to pay a
 14 fee to the director of the nominee entity?
 15 MR. FIGEL: Objection.
 16 THE WITNESS: Yes.
 17 MR. SMITH: Objection.
 18 BY MR. CHRETIEN:
 19 Q What was that fee?
 20 A I don't know off the top of my head. \$500, a
 21 thousand dollars, something like that.
 22 Q What was the -- what was that -- the purpose
 23 of the fee, from your perspective as CFO involved in
 24 the transaction?
 25 MR. FIGEL: Objection.

64

1 THE WITNESS: Just repeat the question
 2 again.
 3 BY MR. CHRETIEN:
 4 Q What was LOM buying with the \$500 fee to a
 5 nominee director?
 6 MR. FIGEL: Objection.
 7 MR. SMITH: Objection.
 8 THE WITNESS: Nominee name to take your
 9 private placements down in.
 10 BY MR. CHRETIEN:
 11 Q Somebody to sign documents?
 12 A Yes.
 13 Q Did you expect anything else from the nominee
 14 directors?
 15 MR. FIGEL: Objection.
 16 MR. SMITH: Objection.
 17 THE WITNESS: I don't know.
 18 BY MR. CHRETIEN:
 19 Q Did you have an understanding of the
 20 responsibilities of a nominee director?
 21 MR. FIGEL: Objection.
 22 MR. SMITH: Objection.
 23 THE WITNESS: My only dealings is through
 24 private placement documents; that's my only
 25 dealings with the nominee companies.

1 BY MR. CHRETIEN:

2 Q Okay. In those dealings did you expect the
3 nominee director to review those private placement
4 documents?

5 MR. FIGEL: Objection.

6 MR. SMITH: Objection.

7 THE WITNESS: No, I don't know.

8 BY MR. CHRETIEN:

9 Q I'm sorry, is it no or I don't know?

10 A I don't know.

11 Q You don't know what your expectations would
12 have been for a nominee director in the transactions
13 you were involved in?

14 MR. FIGEL: Objection.

15 MR. SMITH: Objection.

16 THE WITNESS: I was not involved in using a
17 nominee name. That's typically a sales operation
18 where you look at a private placement, you decide
19 how many of your clients wish to purchase, and
20 then the salesperson would decide the nominee
21 names to take the placement down in.

22 BY MR. CHRETIEN:

23 Q Why use nominees at all for LOM?

24 MR. FIGEL: Objection.

25 MR. SMITH: Objection.

1 THE WITNESS: It's more efficient than

2 filling in individual placements for each client.

3 And as I say, it's an industry standard that

4 companies use nominees. For example, our

5 custodian, all of the assets or the certificates

6 that we send up to our custodian have to be put

7 into that custodian's nominee name so that they

8 can then take those assets and put them into DTC

9 or CDS, whatever it trades.

10 BY MR. CHRETIEN:

11 Q You mentioned the executive committee meeting
12 you attended shortly after the Sedona transaction. We
13 won't go into the substance of it because your attorney
14 has claimed attorney-client.

15 MR. FIGEL: And also because I believe --

16 MR. SMITH: Wait. I'm sorry. Run that by us
17 again one more time.

18 MR. CHRETIEN: I don't mean to misstate your
19 position, but I think --

20 MR. SMITH: It's not my position.

21 MR. CHRETIEN: Right -- LOM's position that
22 it would contain privileged matters.

23 MR. FIGEL: What I asked for was a foundation
24 question to determine whether a privilege exists.

25 MR. SMITH: I don't think there's been any

67

1 direction not to answer, at least I haven't heard
2 one.

3 MR. CHRETIEN: Okay. That's fair.

4 BY MR. CHRETIEN:

5 Q Following the executive committee meeting
6 that we've been discussing, you spoke to auditors about
7 the subject matter discussed in the executive committee
8 meeting; is that correct?

9 MR. FIGEL: Objection. I usually don't like
10 to make speaking objections, but the testimony is
11 there was an executive committee meeting every
12 week, and we've spoken about several of them, so
13 if you could be a little more specific.

14 BY MR. CHRETIEN:

15 Q Okay. I'll specify. Executive committee
16 meeting following the halt in trading of Sedona stock
17 that you attended, but which we have not delved into
18 for the reasons we just discussed. Now, following that
19 meeting, subsequent to that meeting, maybe months
20 later, you spoke to auditors, correct?

21 A Correct. As part of my annual audit process,
22 yes.

23 Q And you spoke to them about the subject
24 matter of that meeting; is that correct?

25 A No, not particularly.

68

1 Q Did you to any degree?

2 MR. FIGEL: Objection.

3 MR. SMITH: Objection.

4 THE WITNESS: I don't recall what was
5 discussed in that meeting.

6 BY MR. CHRETIEN:

7 Q Did you discuss matters with the auditors
8 that you learned in the executive committee meeting?

9 A No. The auditors -- the reason that they
10 looked at this whole SSSI transaction was to put a note
11 into the financial accounts. It's quite a substantial
12 two- or three-page note. And that note was put
13 together with the help of our counsel, as well as
14 compliance, and also the board of directors; they met
15 with the board of directors, as well. And most of the
16 note they put together from documents that were
17 available, public documents that SEC had sent to head
18 of compliance and matters of public record.

19 Q Okay. With respect to the executive
20 committee meeting that followed, immediately followed
21 the trading halt, I think you mentioned that Mr. Surmon
22 spoke that meeting; is that correct?

23 A From my recollection, yes.

24 Q And who else spoke?

25 A The whole executive talk about various

1 operation issues.
 2 Q So Brian Lines spoke?
 3 A I'm sure he spoke during the meeting, yes.
 4 Q Do you recall what he said?
 5 A No.
 6 Q Scott Lines spoke?
 7 A I'm sure he did, yeah.
 8 Q You don't recall what he said?
 9 A No.
 10 Q What about Donald Lines?
 11 A Donald Lines would have spoken, as well.
 12 Q You don't recall what he said?
 13 A That was seven years ago. No.
 14 Q Do you recall what anybody said at that
 15 executive committee meeting?
 16 A No, not without reviewing minutes and...
 17 Q Where would the minutes be kept?
 18 A In the minute book.
 19 Q And who keeps that?
 20 A Corporate secretary.
 21 Q Who is the corporate secretary now and --
 22 A Still the same. Water Street Corporate
 23 Services.
 24 MR. CHRETIEN: That will be the third
 25 undertaking that I request. I realize you and I

1 will want to talk about it.
 2 MR. FIGEL: I understand you made a request.
 3 I make no undertakings.
 4 MR. SMITH: I have to take a break at 4:00.
 5 Something I've been putting off all week long.
 6 MR. CHRETIEN: Well, I think we're almost
 7 done.
 8 MR. SMITH: Great.
 9 BY MR. CHRETIEN:
 10 Q Without trying to belabor this point too
 11 much, you testified that LOM now uses an entity -- uses
 12 its own nominee accounts, correct, for certain
 13 transactions?
 14 A We use LOM Nominees, we use LOM Securities
 15 Bermuda, LOM Securities Bahamas, Cayman.
 16 Q But specifically with the use of LOM Nominees
 17 Ltd., why not just put it in the name of LOM?
 18 MR. FIGEL: Objection.
 19 THE WITNESS: Which LOM?
 20 BY MR. CHRETIEN:
 21 Q Well, any of the -- any of the entities, the
 22 appropriate ones, whether it's LOM Securities Bermuda
 23 or Bahamas or Cayman?
 24 MR. FIGEL: Objection.
 25 MR. SMITH: Objection.

71

1 THE WITNESS: Well, LOM Nominees was
 2 specifically set up to hold local Bermuda assets.
 3 BY MR. CHRETIEN:
 4 Q Is that the name of the account, LOM
 5 Nominees?
 6 A That's name of the company, yes.
 7 Q Okay. And there are nominee accounts within
 8 LOM Nominees?
 9 A No. That's just one nominee. That's one
 10 company that's called LOM Nominees. And as I said,
 11 it's standard practice with a lot of these companies
 12 that -- UBS, for example, and CBIC both have nominee
 13 names that you send certificates to and put them in
 14 their nominee name. It just makes it more efficient
 15 for them to then get those certificates into electronic
 16 form.
 17 Q The Uptix™ system would reflect the use of
 18 LOM Nominees by listing a particular purchaser, for
 19 example, as LOM Nominees, or would appear as a
 20 different name?
 21 MR. FIGEL: Objection.
 22 THE WITNESS: No. Let's -- as an example, if
 23 you take a private placement down for 50,000
 24 shares of ABC Corp. in LOM Nominees, those 50,000
 25 shares will be reflected in the purchasers'

72

1 account, so that could be made up of 50 different
 2 clients.
 3 BY MR. CHRETIEN:
 4 Q Okay.
 5 A LOM then holds the certificate in LOM
 6 Nominees.
 7 Q Okay. Back in the time frame we're
 8 discussing, did you know any of the directors of any of
 9 the nominee entities that LOM was using?
 10 MR. FIGEL: Objection.
 11 MR. SMITH: Objection.
 12 THE WITNESS: I knew a few of the names,
 13 yes.
 14 BY MR. CHRETIEN:
 15 Q What were those names?
 16 MR. FIGEL: Objection.
 17 MR. SMITH: Objection.
 18 THE WITNESS: Kevin Winter.
 19 BY MR. CHRETIEN:
 20 Q I'm sorry?
 21 A Kevin Winter. Kevin Way. Kevin Gunther, I
 22 believe.
 23 Q Is everybody a Kevin?
 24 A Or a Scott.
 25 That's the only ones that I recall.

1 Q Kevin Winter, Kevin Way, and Kevin Gunther?
 2 A Yes.
 3 Q And Mr. Winter was associated with what
 4 nominee account?
 5 A I don't know.
 6 MR. SMITH: Objection.
 7 BY MR. CHRETIEN:
 8 Q How about Kevin Way?
 9 A I don't know.
 10 Q And each of these gentlemen was paid a fee
 11 for their services?
 12 A Correct.
 13 MR. SMITH: Objection.
 14 MR. FIGEL: I object to all those questions,
 15 as well. I wasn't quick enough to get it out.
 16 MR. CHRETIEN: That's all I have. All right.
 17 Thank you for coming in today.
 18 Do you guys have follow-up?
 19 MR. FIGEL: Can we have just a -- can we go
 20 off the record for just a couple minutes?
 21 MR. CHRETIEN: Off the record.
 22 THE VIDEOGRAPHER: Going off the record at
 23 3:55 p.m.
 24 (A discussion was held off the record.)
 25 THE VIDEOGRAPHER: Going on the record at

1 4:03 p.m.
 2 CROSS EXAMINATION
 3 BY MR. FIGEL:
 4 Q Mr. Moseley, could you take a look at what
 5 the SEC lawyers have marked as Exhibit 121 alpha and
 6 121 bravo?
 7 A Was that the landscape or portrait?
 8 Q One of each.
 9 A Right. Okay. Yep.
 10 Q Looking at the one that is -- I'm not sure I
 11 know my landscape from my portrait. 121A, which is the
 12 standard.
 13 A Yeah. That's portrait.
 14 Q You testified that you recognize this as data
 15 that would be -- could be obtained from Uptix™. Do you
 16 recall that?
 17 A Correct.
 18 Q Can you tell from the documents that have
 19 been Bates numbered ad 121 alpha what criteria was
 20 applied to Uptix™ in order to yield the data that's
 21 reflected in this data?
 22 A Sure. They've selected account type --
 23 account number, account name, and they've used a date
 24 range by the look of it, 1st of December '01 to 19th of
 25 April of '04. There is a transaction type, which is a

1 unique transaction within Uptix™. And they've got the
 2 transaction description, which is linked to that
 3 transaction type. There is the cash security
 4 movements, so cash BMD, which is Bermuda dollars, cash
 5 USD, and a quantity -- the cash amount, which is
 6 quantity, and then a description of what that cash
 7 amount was used for.
 8 Q And can you tell from this, though,
 9 specifically what criteria -- I understand that's the
 10 format -- but what criteria they applied to Uptix™ in
 11 order to get this data?
 12 A No, not without seeing the search criteria.
 13 Q And you can't tell that from 121A?
 14 A No.
 15 Q If you take a look at 121B, I have the same
 16 question. Can you tell, aside from the format, what
 17 search criteria was applied to Uptix™ in order to
 18 generate the report or the data reflected on 121B?
 19 A Without knowing the actual search criteria,
 20 no. I can tell you what items have been pulled out.
 21 Q Mr. Chretien asked you a couple questions
 22 about LOM's use of nominees. Do you recall those?
 23 A Yes.
 24 Q And he asked you questions about Mr. Winter,
 25 Mr. Way, and Mr. Gunther. Do you recall that?

1 A You don't know them, yeah.
 2 Q And as I recall, you testified that you
 3 recognize those names as directors of nominee companies
 4 used by LOM?
 5 A Yes, correct.
 6 Q You testified that they were directors of
 7 nominee companies; is that correct?
 8 A Correct.
 9 Q So from that is it true that they would have
 10 opened an account in the name of the company for which
 11 they served as director?
 12 MR. CHRETIEN: Objection.
 13 THE WITNESS: They may have done. Without
 14 access to Uptix™, I wouldn't know.
 15 BY MR. FIGEL:
 16 Q But for them to serve as a nominee in
 17 connection with an LOM transaction, would the companies
 18 for which they had to serve as director have to have
 19 opened an account at LOM?
 20 MR. CHRETIEN: Objection.
 21 THE WITNESS: Probably, yes.
 22 BY MR. FIGEL:
 23 Q And what types of transactions could LOM have
 24 executed in the accounts opened in the names of the
 25 companies for which they served as directors?